

ARIZONA TAX COURT

TX 2005-050276

07/18/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
S. Brown  
Deputy

FILED: 07/21/2006

MJ5 L L C

G MICHAEL TRYON

v.

MARICOPA COUNTY

RICHARD W GARNETT

MINUTE ENTRY

8:36 a.m. This is the time set for oral argument on Plaintiff's Motion for Summary Judgment. Plaintiff is represented by counsel, Michael Tyron. Defendant is represented by counsel, Richard Garnett.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

LET THE RECORD REFLECT as matters were submitted by the Defendant outside the pleading, the Court is treating Defendant's Motion to Dismiss as a Motion for Summary Judgment.

The Court having received Plaintiff's Motion to Continue Oral Argument filed July 11, 2006,

IT IS ORDERED denying Plaintiff's Motion to Continue Oral Argument set today.

Argument presented on said motions.

IT IS ORDERED taking this matter under advisement.

9:02 a.m. Matter concludes.

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LATER:

Defendant's Motion to Dismiss has been under advisement. As matters outside the pleadings have been raised by the parties and considered by the Court, the Court treats the motion as one for summary judgment pursuant to Rule 12(b).

Defendant Maricopa County has levied property tax on the property of Plaintiff located at 11050 North 96<sup>th</sup> Street in Scottsdale. Plaintiff asserts that its property is a school, exempt from property tax under A.R.S. § 42-11104(A), and seeks declaratory judgment to that effect, as well as "such other and further relief as the Court deems just and proper." Defendant has filed a Motion to Dismiss Plaintiff's Complaint as not timely filed under A.R.S. § 42-16210.

Plaintiff's Complaint does not specifically ask that past taxes levied on its property be nullified, but in its Response to the Motion to Dismiss appears to be arguing for retrospective as well as prospective relief through the declaratory judgment. The County asserts that the property is not exempt, and further that Plaintiff filed this action after the tax for 2005 became delinquent. The request for declaratory judgment is properly before the Court. The County has indicated that it intends to continue levying taxes on the property. Thus, if the Court were to rule in a declaratory judgment action that the property is exempt, that ruling would prevent the levy of taxes for the current valuation year and future years (the Court at this point declines to rule on the merits). However, as applied to past tax years, this action is not timely. A taxpayer may raise questions concerning the correctness of the classification or valuation of his property only in a suit brought for refund of taxes paid under protest. *Pima County v. American Smelting & Refining Co.*, 115 Ariz. 175, 176 (App. 1977). Payment under protest as a prerequisite for relief is a statutory jurisdictional mandate. *Pima County v. Cyprus-Pima Mining Co.*, 119 Ariz. 111, 114 (1978).

Therefore, IT IS ORDERED the County's Motion to Dismiss, treated as a motion for summary judgment, is granted to the extent that Plaintiff may not seek declaratory judgment to void 2005 taxes delinquent when the original Complaint was filed, and denied in all other respects.